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Classified By: POLITICAL COUNSELOR ROBERT R. DOWNES FOR REASON 1.4 (D)

Summary

[1](#)1. (C) When President Hugo Chavez came to power in 1999, there was general dissatisfaction with the judicial system, which the Venezuelan public viewed as extremely corrupt. He used his mandate and his majority in the National Constituent Assembly to create laws that purported to make the judicial system more accountable, but that in practice have rarely been followed. Moreover, Chavez has stacked the Supreme Court and systematically fired judges and prosecutors thought to be insufficiently supportive of the Bolivarian Revolution, further consolidating his hold on power and disabling challenges to his authority. The Venezuelan judiciary--like many in Latin America--has never been idyllic, but Chavez' changes over time have deepened politicization of the courts and eliminated any pretense of autonomy. It is now an effective tool for going after Chavez' political enemies, but fails to address Venezuela's serious and growing crime issues. Post offers this look at Chavez' dismantling of the court system as a window on other countries in the region that might follow on the path of Bolivarianism. End Summary.

Declare an Emergency

[1](#)2. (C) When President Hugo Chavez came to power in 1999, the judiciary was generally perceived by the Venezuelan public as notoriously corrupt selling justice to the highest and/or most politically-connected bidder. In fact, popular frustration with the dysfunction of the court system, and

practically every other government institution, helped bring President Chavez to power. He capitalized on this sentiment and his mandate for change, encouraging the National Constituent Assembly (ANC) to declare a judicial emergency. The ANC set up a Judicial Emergency Committee, which co-existed with a similar already established committee, to overhaul the court system and root out corrupt judges. (Note: Chavez typically sets up a parallel or redundant structure to undermine an existing one.) This Emergency Committee took advantage of the blurred line between it and the parallel committee to summarily fire judges without adhering to due process. A former member of the committee told poloff that by 2001, the Committee fired 184 judges allegedly for corruption. Other contacts put the total number as high as 400. Several judicial officials, including the then-Supreme Court President, stepped down during this process protesting what they (correctly) perceived to be the beginning of the end of judicial independence.

Work Systematically from the Top

¶3. (C) At first read, many of the Constitutional provisions governing the judiciary appear to be changes for the better. In keeping with Chavez' platform of participatory democracy and restoring "power to the people," the Constitution declares that the judiciary's authority comes from the people and is carried out in the country's name (versus that of political interests). The Constitution also created an Ombudsman charged with defending victims of government-sanctioned human rights abuses and a Comptroller.

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These officials along with the Attorney General form the Public Power branch of government, also known as the Moral Republican Council (MRC). The selection process for Supreme Court--now Tribunal of Supreme Justice (TSJ)--Justices changed from a closed process controlled by the legislature to an open one where theoretically a civil society-based selection committee creates a list of potential candidates that is vetted by the MRC before going to the National Assembly, which makes the final selection. The ANC also merged the Supreme Court and the previously autonomous Judicial Council, giving the TSJ control over the lower courts and discipline of its judges through the Directorate of the Magistrates (DEM). To minimize politicization, the Constitution required all lower court judges to submit to competitive examination before being selected or promoted and made them personally responsible for political interpretations of the law and deliberate failures in carrying out duties.

¶4. (C) As with many legal issues in the Bolivarian Republic, however, the problem came with the implementation of the law, or more specifically, lack thereof. In the name of the "Revolution," Chavez' then-mentor Luis Miquilena bypassed the selection process established in the new Constitution, allowing the provisional legislature that he headed to appoint all of the TSJ and MRC positions. Chavez, then-Vice President Isaias Rodriguez became Attorney General. Miquilena's lawyer, who had no human rights experience, was chosen to replace the interim Ombudsman, who was considered too effective. Miquilena's business partners, Chavez loyalists, and representatives from opposition parties (Accion Democratica, Movement Toward Socialism, Copei, and Proyecto Venezuela) that negotiated with the government were given spots on the TSJ. Thus, any chance for an autonomous judiciary was quickly undermined.

If At First You Don't Succeed. . .

¶5. (C) Judicial changes that occurred after 2003 show Chavez learning from his mistakes or failures and adjusting to

accomplish his goals. In the first few years after the 1999 Constitution was passed, justices ruled in the government's favor in cases involving the opposition or issues of interest to Chavez. For example, the TSJ facilitated Chavez' attempt to co-opt the national labor union, ruled that NGOs receiving foreign funding should not be considered part of civil society, and dismissed serious corruption charges against Miquilena. Occasionally, if a strong legal case could be made and/or enough judges were "persuaded," the courts would rule against the government. The turning point came in August 2002, however, when the Supreme Court ruled 11-7 to acquit military leaders accused of rebellion during the April 2002 coup, in spite of Chavez, intimidation and bribery attempts. Although many hailed the decision for averting a potential social crisis, Embassy contacts told us Miquilena--who had fallen out with Chavez in 2000--orchestrated the decision. This ruling was a huge blow to Chavez and set the stage for the judicial restructuring that followed.

16. (C) In 2003, less than a year after the 2002 decision, Chavista legislators proposed the Organic Law of the TSJ to bring the court system back in line. The TSJ Law increased the number of Supreme Court justices from 20 to 32, allowed the National Assembly to appoint and remove judges with a simple majority (although the Constitution calls for a two-thirds vote), and gave the MRC the power to suspend justices pending their removal. Pro-government deputies claimed the changes were necessary to reduce (a virtually nonexistent) TSJ backlog. The opposition tried to fight the court-packing scheme, but Chavez organized his slim majority

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to finally ram the bill through the National Assembly (AN) in May 2004. Once passed, pro-government deputies removed five judges linked to Miquilena and the opposition. They chose supporters that had proven capable of following orders, such as former National Electoral Council (CNE) President Francisco Carrasquero, who had helped give Chavez an electoral advantage in the 2004 referendum. Recently impeached justice Luis Velazquez Alvaray, who had promoted the TSJ Law and proposed a constitutional amendment to allow Chavez to run for president indefinitely, was also appointed to the high court. Human Rights Watch report called the law a "grave threat to the independence of the judiciary."

. . . Start All Over Again

17. (C) In February 2005, shortly after its appointment, the new TSJ conducted a witch hunt to remove perceived pro-opposition judges in the lower courts under the guise of reviving the stalled anti-corruption campaign in the judiciary. Alvaray headed this effort as president of the Judicial Committee and allegedly collaborated with high level government officials, such as Vice President Rangel and AN President Nicolas Maduro, to fire some 400 judges, many of whom had rendered "unfavorable" decisions or clashed with ruling party officials. Judges were locked out, physically barred, or even booted out of their offices by National Guard officials. The First Administrative Court, Venezuela's second highest court responsible for reviewing challenges to government administrative actions, was effectively dissolved. To date, the court has not been re-established.

18. (C) Around the same time the Attorney General's office was also purged. Former prosecutors told poloff that some 80 to 200 prosecutors were fired between 2004 and 2005. Some for events related to the April coup, others for signing the presidential recall petition, or denouncing irregularities in the Attorney General's office. Those not dismissed were sent to remote locations, a tactic Chavez has used for perceived pro-US military officers as well. The prosecutors who tried to appeal their dismissals through the court system told poloff in 2005 that the judges in their cases informally

told them that they could not overturn the decisions, lest they themselves be fired. Ramon Medina, the former Director of Criminal Prosecution who resigned under pressure during this time, told poloff in 2004 that Isaias Rodriguez was personally hiring new prosecutors based on BRV recommendations. Deceased prosecutor Danilo Anderson told us days before his death that as a result of the purge surviving prosecutors were carefully following Rodriguez' orders to keep their jobs.

Correct the Record

¶9. (C) Since late 2004, the judiciary, like the legislative and electoral powers, is perceived as a clog in Chavez' machine adjusting reality to the way he wants history remembered. Ten days after the TSJ was expanded, arrest warrants were issued for eight leaders of the 2002-2003 national oil strike. Thirty other suspected and documented supporters of the April 2002 coup were prohibited from leaving the country. In December 2005 strike leader Carlos Ortega was sentenced to 16 years and one day in prison for civilian rebellion and incitement to commit a crime, despite an International Labor Organization (ILO) ruling that the strike was legitimate. The most blatant decision came in March 2005 when Attorney General Rodriguez persuaded the new TSJ to reverse its 2002 acquittal of the generals accused of

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military rebellion for leading the coup. Currently, at least four opposition ex-governors have or will face charges for

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corruption or events related to 2002. Other prominent opposition and social figures, including former Caracas police commissioners, journalists, businessmen, students, NGO representatives, and clergy, have been threatened with criminal investigations. Even political figures that may present a credible challenge now or in the future, such as Zulia Governor Manuel Rosales, Baruta Mayor Henrique Capriles and his Chacao counterpart Leopoldo Lopez, have drawn dubious legal charges or threats of prosecution (refs a-c).

¶10. (C) When not reversing history, judges are helping to ensure Chavez' continuation in power and advance his political goals. In the runup to the December 2005 legislative election, the TSJ dismissed opposition constitutional challenges to annul the use of the morochas electoral device (running candidates under different party labels to increase vote share) arguing the opposition had used it first. At its inaugural session in January 2006 TSJ Justices chanted "Chavez no se va," an anti-revocatory slogan supporting Chavez. TSJ President Omar Mora has recently said the judiciary will help the President meet his 10 million vote goal for the December presidential elections. As of February 2006, the TSJ's Constitutional Chamber still had not ruled on the constitutionality of amendments to the Penal Code, which included restrictions on pot-banging and other forms of peaceful protests. The courts have also done little to stop land expropriation, despite a 2002 TSJ decision that the takeovers were illegal. Former British Embassy Officer told PolCouns in late 2005, for example, that the judge in charge of reviewing the BRV's expropriation of land from the British-based Vessey Corporation (ref d) was stalling the case indefinitely rather than risk the BRV's wrath.

Now Justice Sees Red and Green

¶11. (C) Most political and some drug cases are handled by a handful of "political prosecutors" and judges beholden to BRV officials, continuing the system Chavez initially railed against. (Note: Cases are supposed to be assigned to prosecutors and judges by lottery.) Many of these special

prosecutors are opportunists who use their position to extort their way to wealth and power. The murder of Anderson, one of the BRV's favored political attorneys, is generally thought to be linked to an extortion ring in which he allegedly participated. Alvaray (ref e) denounced the existence of a similar group of judges known as the "Band of Midgets," who at times worked on Vice President Rangel's behalf. Ex-judge Monica Fernandez alleges she was fired by the "Midgets," who are also pursuing charges against her because she issued an arrest warrant for Chavez' then-Interior Minister Ramon Rodriguez Chacin in April 2002. In the few cases where less politically-biased judges receive politically-charged cases, they tend to delay the trial or seek to remove themselves rather than risk accidentally triggering Chavez' ire.

¶12. (C) Political prosecutions typically start with an announcement by a high-level Chavista. A short period later, the Attorney General or the chosen prosecutor announces the start of the investigation. Arrest warrants or prohibitions on foreign travel may be issued, depending on the suspect's public profile. Hearings are frequently delayed because witnesses or lawyers don't show, or because of fabricated bureaucratic reasons. The cases move forward when convenient for the BRV, sometimes to distract the public from a serious governance issue or to keep the opposition off-balance. Only international attention or, in a few cases, popular outcry seems to prevent or delay a gross miscarriage of justice in obviously political cases, such as the Sumate and (2004) Baruta Mayor Henrique Capriles trials. (However, at times the Chavistas do not want to convict these defendants but to

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drag the trial out, intimidate them and encourage them to flee the country.) Meanwhile, similar charges of corruption or criminal activity against Chavistas are ignored. According to a 2005 El Universal article, the Attorney General's Office has yet to act on at least 58 corroborated allegations against Chavistas submitted since 2000. This use of the Attorney General's office to go after BRV opponents drew criticism from the Andean Commission of Jurists in July ¶2005.

¶13. (C) Recently the Attorney General's office has launched a series of television ads showing prosecutors piecing together a puzzle of Venezuela with an outline of Lady Justice superimposed. Once together Lady Justice's blindfold comes off as an announcer declares the BRV is "building a justice that has its eyes open." While she may be looking out for the government, the same cannot be said for the average Venezuelan. Of the almost 10,000 reported murders committed in 2004 only seven percent of the suspected culprits were convicted, according to statistics from the BRV and Central Venezuela University. The Attorney General's own statistics indicate that only 88 of 6,000 police officers implicated in extrajudicial killings have been convicted. There are also implications for international law enforcement cooperation as roughly 75 percent of the prosecutors purged had received USG training.

Comment

¶14. (C) Post offers these reflections for other missions in the region on the Chavez path. A few final observations: First, the process begins under cover of legality, or at least legislative approval and popular mandate for change. Second, the Constitution and other more specific laws appear reasonable and more equitable than the previous legal structure, with the more restrictive aspects paling in comparison to more authoritarian regimes. Venezuela has largely escaped international criticism for years. However, their implementation, combined with the erosion of checks and balances, presents a more ominous threat to the rule of law. Chavez' work on dismantling the judiciary was systematic and

persistent. But the process is evolutionary, not revolutionary.

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